

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

May 21, 2013

In the Matter of SUTHERBY/SMITH, Minors.

No. 312920

Shiawassee Circuit Court

Family Division

LC No. 09-012537-NA

Before: HOEKSTRA, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

Respondent-mother appeals by right an order of the trial court that terminated her parental rights to the minor children S and J under MCL 712A.19b(3)(c)(ii) (parent failed to rectify conditions that led to court jurisdiction over the children), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood that the child will be harmed if returned to the home of the parent). We affirm.

On November 17, 2010, the Department of Human Services (DHS) petitioned the court to take jurisdiction over S. The petition stated that another of respondent's children, T, had been removed from her custody because (1) respondent admitted to using alcohol and marijuana during the pregnancy, (2) T was born positive for THC, (3) respondent had no stable residence and refused to properly care for T, and (4) respondent tested positive for THC on April 26, 2010, May 3, 2010, and May 13, 2010. The petition further alleged that S was born positive for opiates and showed signs of withdrawal after birth.

On October 27, 2011, the DHS petitioned the court to take jurisdiction over J, alleging that respondent-mother "has failed to participate in or complete services, regarding domestic violence history, substance dependency, stable housing, ongoing financial support, and mental and emotional instability." The petition stated that J was born positive for THC and that respondent-mother was currently awaiting sentencing for unarmed robbery. Respondent pleaded responsible to both petitions, allowing the court to take jurisdiction over the children.

On December 14, 2011, the trial court terminated respondent's parental rights to T under MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(c)(ii), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j).¹

On May 8, 2012, the DHS petitioned the trial court to terminate respondent's parental rights to S and J. The petition alleged that respondent-mother failed to complete several requirements of the parent-agency treatment plan: finding and maintaining appropriate housing; parenting classes; substance-abuse treatment; complete compliance with drug testing; and domestic-abuse services. The petition further stated that respondent had been incarcerated six different times since the children had been removed from her care and that she was currently incarcerated with an earliest release date of June 2013.²

Joshua White, a DHS foster care worker, who oversaw the cases of all three of respondent's children, testified that respondent failed to complete a second set of parenting classes, complete domestic violence counseling, obtain employment, or obtain stable housing. White acknowledged that respondent completed individual counseling and, while incarcerated, completed her GED and additional parenting classes. White admitted that respondent's ability to complete the requirements of the agency plan was limited by her continued involvement in criminal activity and resulting incarceration. However, during her involvement with DHS, respondent both missed and had tested positive at several drug screens. At the time of termination, respondent was currently on a Michigan Department of Corrections (DOC) wait list for substance-abuse treatment and Narcotics Anonymous. White acknowledged that respondent's domestic violence counseling was interrupted by her incarceration. He stated that respondent had completed a self-esteem program while incarcerated. White testified that, in his opinion, the conditions that led to the adjudication continued to exist and were unlikely to be rectified "in the near future," that the children would be at risk of harm if returned to respondent's care, and that it was in the children's best interests that respondent's parental rights be terminated. White also suggested that the children "be adopted by their aunt, who has been their care giver most of their lives."

Respondent testified that, while incarcerated, she completed a self-esteem program and began several other programs, including Alcoholics Anonymous, domestic violence classes, and a prisoner re-entry program. She also participated in the "Staying in Closer Touch" program, in which she records herself reading a book onto a CD, which is then sent to her children.

Respondent challenges the trial court's findings that statutory grounds for termination were established by clear and convincing evidence. We review a trial court's factual findings, including its determination that a statutory ground for termination of parental rights has been proven by clear and convincing evidence, for clear error. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

¹ The termination of respondent's parental rights to T is not at issue in this appeal.

² Respondent was sentenced on January 6, 2012.

A trial court may terminate a respondent's parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and (2) that termination is in the children's best interests. MCR 3.977(F); *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2001). Here, the trial court terminated respondent's rights under MCL 712A.19b(3)(c)(ii), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

* * *

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Clear and convincing evidence presented at trial supports the trial court's decision to terminate respondent-mother's parental rights under each of these statutory grounds. Respondent failed to comply with several recommendations made by DHS to rectify the conditions that led to adjudication. Respondent failed to follow through with substance-abuse treatment and continued using drugs, as evidenced by missed and positive drug screens. Despite DHS involvement, respondent continued to use drugs, resulting in J being born positive for THC. Respondent failed to complete the required parenting and domestic violence classes. She also failed to obtain employment and stable housing. We acknowledge that respondent's ability to complete all the requirements was hampered by her repeated incarceration. However, her pattern of criminal activity is well documented and does not excuse her failure to rectify the conditions that led to

adjudication. At the time of termination, nearly a year had passed since the children were removed from respondent-mother's care. Respondent's failure to adequately rectify the conditions that led to adjudication during that time, combined with her continued incarceration, supports the trial court's conclusion that she could not rectify the conditions in a reasonable time. Therefore, we are not left with a definite and firm conviction that the trial court erred in finding that the statutory ground for termination under MCL 712A.19b(3)(c)(ii) was established. Because only one statutory ground is necessary to support the termination of a parent's rights, we need not address whether any other conditions were satisfied as well. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

Respondent's reliance on *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), is misplaced. While respondent correctly notes that *In re Mason* provided that "[t]he mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination," *id.* at 160, here, the evidence establishes that respondent's parental rights were not terminated solely due to her incarceration. Rather, the evidence demonstrates that in addition to her incarceration, respondent continually failed to adequately address domestic violence, substance abuse, housing, and employment issues. These problems occurred over a lengthy period of time, including an appreciable period before her current incarceration. While some of respondent's inability to comply with DHS recommendation may have been due to her incarceration, the evidence is clear that she had not made any concerted effort to come into compliance before she was incarcerated. Further, in *In re Mason*, the Supreme Court found that the trial court and DHS's failure to secure Mason's presence at the hearings, along with DHS's complete abandonment of its statutory duty to involve Mason in the reunification process, had prevented Mason's meaningful participation in the proceedings. *Id.* at 152-160. The instant case is clearly distinguishable. Respondent testified in person at the termination hearing, was party to the parent-agency agreement, and was provided ample opportunity to engage in the required services. Thus, we find respondent's reliance on *Mason* unpersuasive.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder